

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1331

ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

B
PAS

UNITED STATES OF AMERICA,

Respondent,

vs.

URBAN DIDIER,

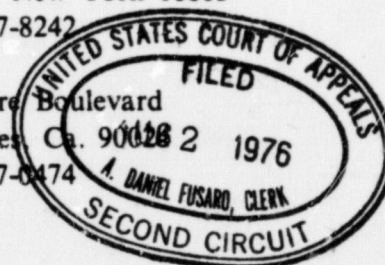
Defendant-Appellant.

APPELLANT'S APPENDIX

JULIA P. HEIT
EDWARD MASRY
Attorneys for Appellant

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10960 Wilshire Boulevard
Los Angeles, Ca. 90028
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APPENDICES

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D. C. Form No. 100 Rev.

TITLE OF CASE

THE UNITED STATES

09.

ATTORNEYS

For U. S.: 264-6433

Walter S. Rowland, AUSA

1) JOHN LOMBARDOZZI both cts.

2) UREAN J. DIDIER, a/k/a "HARP" both cts.

3) EDWARD K. ASHDOWN ct. 1

For Defendant:

(01) STATISTICAL RECORD

COSTS

DATE _____

NAME OR
RECEIPT NO.

REC.

DISB.

J.S. 2 mailed

Clerk

J.S. 3 mailed /-

Marshal

Woffordcomp.#70-3483

Docket fee

Title 18:2314 and 2, transporting stolen securities
See, in foreign commerce (ct. 2)
18:371 conspiracy so to do
(ct. 1)

-- ONE COUNT--

PROCEEDINGS

2-16-73

2-16-73 Filed Indictment -- B/Warrants ordered as to all defts. -- Stewart, V.
Case assigned to Judge Cooper as a related matter. (71 CR 565)
Bench Warrants issued.

2-28-73 Ashdown-Filed papers rec'd from the district of California (Central)
PRB in the amount of \$10,000, ~~xxx~~ Bail reform act copy 2.

2-28-73 Bidler-Filed letter and papers rec'd from the District of California
PRB \$10,000. Bail reform act form 2.

3-19-73	Lombardozzi-Court directs entry of not guilty plea.
---------	---

Didier- Court directs entry of not guilty plea. Bail in the amount of 10,000. P.R.B. continued. Bail limits extended to include the state of California.

Ashtown- Court directs entry of not guilty plea, Bail in the amount of \$10,000. continued. Bail limits extended to include the State of California.

Pierce 1

A-1

DATE	PROCEEDINGS
3-16-73	Ashdown-Filed warrant for arrest executed 2-21-73.
3-16-73	Didier-Filed warrant for arrest executed 2-21-73.
4-19-73	Filed Governments notice of readiness for trial.
5-31-73	Conference held and adjourned. -- Cooper, J.
9-12-73	JOHN LOMBARDOZZI - Pleads not guilty. REMANDED (No Bail) B/W vacated -- Cooper, J. INVESTIGATION ORDERED. PROBATION NOTIFIED. SENTENCE DATE OPEN. -- COOPER, J.
10-10-73	ASHDOWN, Edward K.- Filed CJA-20, Copy 5, appointing Legal Aid.
11-16-73	JOHN LOMBARDOZZI - Filed Gov't Affidavit requesting that a Writ of Habeas Corpus be issued. Writ issued, Ret 11-19-73.
11-26-73	JOHN LOMBARDOZZI - Deft. produced on Writ. Atty's present. Gov't-Dilem. Deft-Star Deft. withdrawing his plea of Not Guilty and pleads GUILTY to Count 1 only. Pre-sent investigation ordered. Probation notified. Sentence date open. -- COOPER, J.
11-26-73	Jury trial began as to URBAN J. DIDIER and EDWARD K. ASHDOWN before COOPER, J.
11-27-73	Trial continued.
11-28-73	Trial continued.
11-29-73	Trial continued.
11-30-73	Trial continued.
12-2-73	Trial continued and concluded - Jury disagreement - Mistrial declared.
12-12-73	Filed Minutes in the Matter of U.S.A. vs JOHN LOMBARDOZZI, et al, ordered sealed 11-26-73 - COOPER, J.
2-27-74	ASHDOWN, EDWARD- Filed CJA 21 Copy #2 approving payment form. Nation, Court Report
1-24-74	EDWARD ASHDOWN-Filed CJA 20 copy 2 approving payment to Edward S. Panzer dated 1-7- --Cooper, J.
1-17-74	EDWARD ASHDOWN-Filed CJA 21 copy 5 appoint services from Court Reporters dated 1-3- --Cooper, J.
5-22-74	URBAN J. DIDIER- Filed Gov't's Notice of Readiness for Trial on or after 5-23-74.
6-6-74	JOHN LOMBARDOZZI-Filed affdvt & notice of motion to dismiss--Ret. 6-17-74.
6-26-74	JOHN LOMBARDOZZI-Filed affdvt of H. Putzel III for a writ of habeas corpus--Writ issued to Warden, Federal Correctional Institution, Danbury, Conn. Ret. 6-27-74
6-27-74	JOHN LOMBARDOZZI-Filed Envelope Sealed by Order of the Court dtd. June 27, 1974.... Cooper, J. Placed in vault in Room 602.

cont'd on page #3

PROCEEDINGS

JUDGE COOPER

DATE	PROCEEDINGS
5-27-74	JOHN LOMBARDOZZI-Filed ORDER that the notice of motion, supporting affidavit and answering affidavit, filed by the attys. for the deft. and the Govt. regarding a motion to dismiss the indictment is withdrawn by the attys. for the deft. and that said papers be sealed and not be made part of the general file....COOPER, J.
1-8-74	Transcript of record of proceedings, 10-26-73 to 11-29-73
-3-74	JOHN LOMBARDOZZI-Filed Writ of Habeas Corpus directed to Warden, Federal Correctional Institution, Danbury, Conn. with Marshal's return-Writ satisfied 6-28-74-Ward, J.
8-5-74	JOHN LOMBARDOZZI-Filed Writ of Habeas Corpus directed to Warden, U.S. Penitentiary Lewisburg Penn.-Ret. without further execution superceded by new writ.
9-12-74	JOHN LOMBARDOZZI-Filed Govt's. affidavit for a writ of habeas corpus-Writ issued to Warden, Federal Correctional Institution, Danbury, Conn. Ret. 9-16-74.
9-18-74	JOHN LOMBARDOZZI-Filed Govt's. affidavit for a writ of habeas corpus-Writ issued to Warden, Federal Correctional Institution, Danbury, Conn. Ret 9-25-74.
9-20-74	JOHN LOMBARDOZZI-Filed Writ of Habeas Corpus directed to Warden, Federal Correctional Institution, Danbury, Conn.-Writ satisfied, 9-16-74...Edelstein, Ch. J.
9-27-74	JOHN LOMBARDOZZI-Filed JUDGMENT and COMMITMENT (atty present) It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of EIGHTEEN (18) MONTHS ON COUNT 1. This sentence is to run consecutively with any other sentence deft. is now serving. The Court further directs that the Board of Parole may consider paroling deft. at such time as it may determine is proper, pursuant to 18 U.S.C. Section 4208(a)(2).....Cooper, J. Issued commitment 10-1-74.
10-8-74	JOHN LOMBARDOZZI-Filed Writ of Habeas Corpus directed to Warden, Federal Correctional Institution, Danbury, Conn.-Writ satisfied, 9-27-74....Cooper, J.
11-6-74	Filed transcript of record of proceedings dated 11-6-74. URBAN J. DIDIER-
6-30-75	Filed Deft's. notice of motion to dismiss the indictment.
6-30-75	URBAN J. DIDIER-Filed deft's. points & authorities in support of motion to dismiss.
6-30-75	URBAN J. DIDIER-Filed declaration of Rudolph E. Harper in support of motion to dismiss.
6-30-75	URBAN J. DIDIER-Filed deft's. designation of counsel & notice of appearance of Robert E. Harper as attorney for deft.
7-2-75	URBAN J. DIDIER-Filed deft's. declaration in support of motion to dismiss.
7-16-75	Govt. moves for the issuing of a bench warrant - Granted- Govt. moves for a bail of \$25,000 (cash) so ordered....Cooper, J. Deft. Edward K. Ashdown

A-3

BEST COPY AVAILABLE

DATE	PROCEEDINGS	D Ju
7-29-75	URBAN J. DIDIER-Filed Govt's. affidavit in opposition to deft's. motion to dismiss the indictment.	
7-28-75	URBAN J. DIDIER-Filed Govt's. memorandum of law in opposition to deft's. motion to dismiss the indictment.	
7-24-75	URBAN J. DIDIER-Filed deft's. declaration in opposition to Govt's. affidavit.	
7-29-75	URBAN J. DIDIER-Filed OPINION #42872 - Deft's. motion to dismiss the indictment is in all respects denied.....Cooper,J. (mailed notice)	
7-17-75	EDWARD ASHDOWN-Bench Warrant Issued.	
10-3-75	JOHN LOMBARDOZZI-Filed deft's. pro se motion for reduction of sentence.	
11-18-75	EDWARD ASHDOWN-Filed CJA Form 20 Copy 5 appointing Edward S. Panzer as attorney for deft., dated 11-21-74.....Cooper,J.	
11-18-75	EDWARD ASHDOWN-Filed CJA Form 20 Copy 2 approving payment to Edward S. Panzer, dated 11-12-75.....Cooper,J.	
02-20-76	URBAN J. DIDIER-Filed deft's. notice of motion to dismiss the indictment.	
02-20-76	URBAN J. DIDIER-Filed deft's. motion to dismiss the indictment.	
02-20-76	URBAN J. DIDIER-Filed declaration of Rudolph E. Harper in support of deft's. motion to dismiss.	
02-20-76	URBAN J. DIDIER-Filed Deft's. declaration in support of motion to dismiss.	
02-20-76	URBAN J. DIDIER-Filed Govt's. affidavit in opposition to deft's. renewed motion to dismiss.	
02-20-76	URBAN J. DIDIER-Filed Govt's. memorandum of law in opposition to deft's. motion to dismiss.	
02-20-76	URBAN J. DIDIER-Filed Govt's. supplemental memorandum in opposition to deft's. motion to dismiss.	
02-20-76	URBAN J. DIDIER-Filed Govt's. affidavit in opposition to deft's. motion to dismiss.	
02-20-76	URBAN J. DIDIER-Filed OPINION #43907 - Deft's. motion to dismiss is denied in all respects.....Cooper,J. (mailed notice)	
04-12-76	Jury trial begun as to the dft. Urban J. Didier Before Judge Cooper	
04-13-76	Trial Cont'd.	
04-14-76	Trial Cont'd.	
04-15-76	Trial Cont'd.	
04-19-76	Trial Cont'd.	
04-20-76	Trial Cont'd & concluded - Jury Verdict. Dft. Guilty on both counts Jury Polled. Motion made & Denied. Dft. Ordered to call U.S. Atty's Office weekly. Pre Sentence Report Ordered. Probation Notified Sentence June 1, 1976 at 12:30 p.m. Bail Equity of Property to be posted with the U.S. Atty's office within Two(2) weeks.....Cooper J.	

A-4

TE	PROCEEDINGS	Date Ord Judgment
76	Filed Appellant Urban J. Didier Notice to prepare clerk's transcript.	
6	Filed Appellant Urban J. Didier Notice to prepare reporters transcript.	
6	URBAN J. DIDIER - Filed Dfts. Notice of Motion for a new trial.	
76	URBAN J. DIDIER - Filed Gov't Affdvt. in opposition to motion by dft. for a new trial.	
76	URBAN J. DIDIER - Filed Gov't's. Memorandum of Law.	
76	URBAN J. DIDIER - Filed Judgment & Commitment # 76-531 The Dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of SIX (6) MONTHS on Ct. 1. One (1) YEAR on Ct. 2 to run consecutively. The Dft. is placed on probation for a period of THREE (3) YEARS, subject to the standing probation order of this Court. Dft. is Fined \$10,000.00 each counts 1 & 2. Fines Total \$20,000.00. These fines are to be paid within SIX(6) MONTHS or the Dft. is to stand committed until the fines are paid or he is otherwise discharged by due course of law. Dft. advised of his rights to appeal. Bail fixe in the amount of \$45,000.00 previous set, continued pending appeal.....Cooper J. Issued Commitment 6-1-76.	
6	URBAN J. DIDIER - Filed Dfts. Notice of Appeal from judgment dtd. 6-1-76. (mailed notice)	

1 TRUE COPY

RAYMOND F. BURGHART, Clerk

C. E. Thompson

Deputy Clerk

A-5

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S.A.

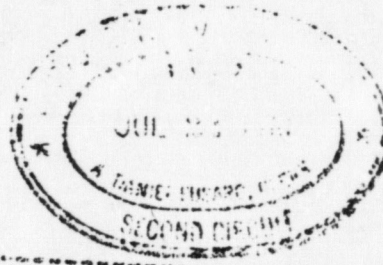
vs

Urban Didier

CASE NO. 73 cr 169

JUDGE IPC

CLERK'S CERTIFICATE



I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- E, and the original filed papers numbered 1 thru 26, and exhibits _____, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED

PROCEEDINGS

IN WITNESS WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 6 day of July, in the year of our Lord, One thousand nine hundred and seventy six, and of the Independence of the United States the 201st year.

Raymond F. Burghardt
Clerk of the Court

A-6

73 cr 169

7/6/76

[Handwritten initials]

I HEREBY ACKNOWLEDGE RECEIPT
OF THE CERTIFIED COPY OF DOCKET
ENTRIES, INDEX AND me
VOLUMES OF ORIGINAL RECORD.

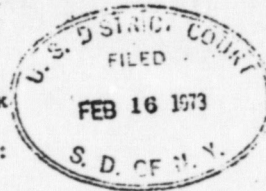
DATE: July 7, 1976
A. DANIEL FUSARO
CLERK, U.S.C.A. 2nd CIR.

S. Konecki
Deputy Clerk

A-7

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

-v-

JOHN LOMBARDOZZI, URBAN J. DIDIER,
a/k/a "HARP", and EDWARD K. ASHDOWN,

Defendants.

INDICTMENT

73 Cr.

CRIM. 169

The Grand Jury charges:

1. From on or about the 1st day of September, 1970 up to and including the 31st day of January, 1971, in the Southern District of New York and elsewhere, JOHN LOMBARDOZZI, URBAN J. DIDIER, a/k/a "HARP", and EDWARD K. ASHDOWN, the defendants, and Dinty Warmington Whiting, named herein as a co-conspirator and not a defendant, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree among themselves and with others unknown to the Grand Jury, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 2314 and 2315.

2. It was a part of said conspiracy that the defendants JOHN LOMBARDOZZI, URBAN J. DIDIER a/k/a "HARP" and EDWARD K. ASHDOWN, and the co-conspirator Dinty Warmington Whiting unlawfully, wilfully and knowingly would receive, conceal, store, barter, sell and dispose of securities of the value of \$5,000 or more, moving as and constituting foreign commerce, knowing the same to have been stolen, unlawfully converted and taken.

A-8

3. It was a further part of said conspiracy that the defendants JOHN LOMBARDOZZI, URBAN J. DIDIER a/k/a "HARP", and EDWARD K. ASHDOWN, and the co-conspirator Dinty Warmington Whiting, unlawfully, wilfully and knowingly would transport and cause to be transported in foreign commerce, securities of the value of \$5,000 or more, knowing the same to have been stolen, converted and taken by fraud.

OVERT ACTS

In furtherance of said conspiracy, and to effect the objects thereof, the following overt acts were committed within the Southern District of New York and elsewhere:

1. On or about November 3, 1970, the defendant JOHN LOMBARDOZZI met with the defendant URBAN J. DIDIER a/k/a "HARP" and the co-conspirator Dinty Warmington Whiting in Nassau, the Bahamas.
2. On or about November 12, 1970, the defendant JOHN LOMBARDOZZI caused a package containing stolen securities to be shipped from Miami Florida to the co-conspirator Dinty Warmington Whiting in Montreal, Canada.
3. On or about November 15, 1970, the defendant URBAN J. DIDIER a/k/a "HARP" met with the defendant EDWARD K. ASHDOWN and the co-conspirator Dinty Warmington Whiting in Zurich, Switzerland.
4. On or about November 18, 1970, the defendant URBAN J. DIDIER a/k/a "HARP" delivered a list of instructions for the sale of stolen securities to the co-conspirator Dinty Warmington Whiting in Zurich, Switzerland.

5. On or about November 18, 1970, the defendant EDWARD K. ASHDOWN and the co-conspirator Dinty Warmington Whiting went to the Morgan Guaranty Trust Company, 15 Broad Street, New York, New York.

6. On or about November 18, 1970, Dinty Warmington Whiting entered the Morgan Guaranty Trust Company, 15 Broad Street, New York, New York.

(Title 18, United States Code, Section 371.)

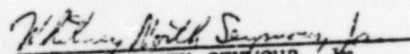
COUNT II

The Grand Jury further charges:

On or about the 18th day of November, 1970, in the Southern District of New York, JOHN LOMBARDOZZI and URBAN J. DIDIER a/k/a "HARP", the defendants, unlawfully, wilfully and knowingly did cause to be transported in foreign commerce from Zurich, Switzerland to New York, New York, securities, to wit, stock certificates of Standard Oil Company of California, General Motors Corporation, Xerox Corporation and General Electric Corporation, having an approximate value of \$500,000, knowing the same to have been stolen, converted and taken by fraud.

(Title 18, United States Code, Sections 2314 and 2.)


FOREMAN


WHITNEY NORTH SEYMOUR, JR.
United States Attorney

^{att. present Sub. Judge. Capt. Stan Meyer}
NOV 26 1973 Defendant John Lombardozzi Withdraws his
of not guilty + pleads guilty to Count 1 only.
Pre sentence Investigation Ordered. Probation notified
Sentence Date Open.

~~NOV 27 1973 Trial Continued~~

NOV 26 1973 Jury trial begun as to ^{Cooper J.} Urban J. Didier
Edward K. Ashdown before: Cooper, J.

NOV 27 1973 Trial Continued.

NOV 28 1973 Trial Continued.

NOV 29 1973 Trial Continued.

NOV 30 1973 Trial Continued ~~_____~~

DEC 3 - 1973 Trial Continued. + Concluded
A jury disagreement - mistrial declared.

Apr 27, 1974 (Capt. Produced on writ.)
Capt. John Lombardozzi (att. present Stan Meyer)
Sent sentence to a term of Eighteen Months.
He is dismissed on motion of Capt. Ashdown with the
rest of the Court.

Cooper J.

JUN 16 1975 ^{Capt. Ashdown} Court moves for the Issuing of a
bench warrant - Granted - Court moves
for a bail of \$25,000 (cash) secured Cooper, J.

APR 12 1976 Jury trial begun as to the Defendant
Urban J. Didier Before: Cooper, J.

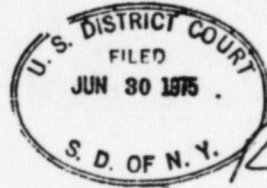
APR 13 1976 Trial Continued)

APR 14 1976 Trial Continued)

APPELLANT'S MOTION TO DISMISS THE INDICTMENT DATED 6/18/75

(SPACE BELOW FOR FILING STAMP ONLY)

RUDOLPH E. HARPER
ATTORNEY AT LAW
3708 ARTERIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90870
TELEPHONE 576-8777



Attorney for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
Plaintiff,)	NO. 73 CR 169 (IBC)
vs.)	
URBAN J. DIDIER, et al.,)	DECLARATION OF RUDOLPH E. HARPER
Defendant.)	IN SUPPORT OF MOTION TO DISMISS

I, RUDOLPH E. HARPER, declare:

I am, and at all times mentioned herein was, the attorney of record for the defendant in this action.

According to the recent case United States v Drummond, 511, F 2d 1049 (1975) "a new trial ordered by an appellate court shall commence at the earliest practicable time, but in any event not later than 90 days after the finality of such order unless extended for good cause, is mandatory and requires that a new trial be commenced within 90 days unless the period is extended for good cause. The Court of Appeals will not tolerate a delay in retrial beyond this time period required by the rule in the future; both the United States Attorney and the judge to whom a retrial is assigned should closely monitor its progress, otherwise, the Government may face dismissal." Second Circuit Rules Regarding Prompt Disposition of Criminal Cases, Rule 6, 28 U.S.C.A.

4
A-11

RUDOLPH E. HARPER
ATTORNEY AT LAW
2706 ARTESIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 376-8777

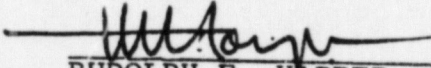
1 Although, defendant URBAN J. DIDIER did waive time
2 for the prior trial, as set out by the Stipulation Re Trial, a copy
3 of which is attached hereto, marked Exhibit "A", and made a part
4 hereof, at the point of time that the retrial was set, the defendant,
5 URBAN J. DIDIER was not represented by counsel and he was never
6 advised of his rights under the 6th Amendment to proceed immediately.
7 Thus, defendant URBAN J. DIDIER, never voluntarily and knowingly
8 waived his rights to a speedy trial.

9 As a matter of fact, the first waiver of time, as set
10 out by Exhibit "A", which was signed by the defendant at the
11 insistence of his then former counsel, ROBERT M. TALCOTT. This
12 stipulation regarding trial was signed after Mr. Talcott had waived
13 time for the defendant, and thus the first waiver of time was not
14 a knowing and intelligently signed waiver of time.

15 The delay in bringing this case to retrial has caused
16 the defendant URBAN J. DIDIER, undue financial and mental hardship.
17 The speedy trial guarantee recognizes that a prolonged delay may
18 subject the defendant to emotional stress that can be presumed to
19 result in the ordinary person from the uncertainties of facing a
20 public trial. These uncertainties are removed by a prompt trial.

21 For the above reasons, the defendant prays that the
22 Order to Dismiss be granted.

23 I declare under penalty of perjury that the foregoing
24 is true and correct and that this declaration was executed on
25 June 18, 1975, at Redondo Beach, California.

26 
27 RUDOLPH E. HARPER, Attorney for
28 defendant URBAN J. DIDIER

A-12

1 ROBERT M. TALCOTT
2 ANGUS, BOSHMAN AND TALCOTT
3 910 John Jay Plaza
4 15233 Ventura Boulevard
5 Sherman Oaks, California 91403
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,
v.
URBAN J. DIDIER, et al.,
Defendant.

NO. 73 CR 169 (IBC)

STIPULATION RE TRIAL

IT IS HEREBY STIPULATED that the trial in the above-captioned case be set on Monday, November 26, 1973, at 10:00 A.M., in the Courtroom of the Honorable Irving Ben Cooper, Senior Judge U.S. District Court for the Southern District of New York.

The Defendant URBAN J. DIDIER gives up and waives his right to have been present for the trial setting, and further waives his right to a speedy trial.

DATE September 18, 1973

Respectfully submitted,

Robert M. Talcott
ROBERT M. TALCOTT, Attorney for
Defendant, URBAN J. DIDIER

Urban J. Didier
URBAN J. DIDIER, Defendant

EXHIBIT

A

(VERIFICATION — 400, 2015.5, C. C. P.)

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am the Defendant

in the above entitled action; I have read the foregoing STIPULATION RE TRIAL

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.

Executed on September 18, 1973 at Sherman Oaks, California
(date) (place)

Urban J. Didier
Signature
URBAN J. DIDIER

(PROOF OF SERVICE BY MAIL — 1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA
COUNTY OF

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

On _____, 19____, I served the within

in the _____
in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
United States mail at _____
addressed as follows:

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.

Executed on _____ at _____, California
(date) (place)

Signature

A-14

VERIFICATION BY PARTY (446, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am the _____

in the above entitled action or proceeding; I have read the foregoing _____

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on _____ at _____, California
(date) (place)

Signature _____

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

2706 Artesia Blvd. Redondo Beach, California 90278

On 6/24/75, 19____, I served the within Declaration of Rudolph

E. Harper In Support of Motion to Dismiss

on the United States Attorney for the So. District of New York
in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
United States mail at Redondo Beach, California
addressed as follows:

Robert Gold
Assistant United States Attorney
United States Attorney Office
Southern District of New York
United States Courthouse
Foley Square
New York, New York, 10007

HONORABLE IRVING BEN COOPER
U.S. District Judge
Southern District of N.Y.
U.S. Courthouse, Foley
N.Y. N.Y. 10007

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on 6/24/75 at Redondo Beach, California
(date) (place)

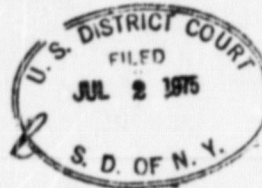
yvette weinstein
Signature
/s/yvette weinstein

A-15

AFFIDAVIT OF APPALLONT IN SUPPORT
OF MOTION TO DISMISS INDICTMENT

(SPACE BELOW FOR FILING STAMP ONLY)

RUDOLPH E. HARPER
ATTORNEY AT LAW
2706 ARTEZIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 378-8717



Attorney for defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
URBAN J. DIDIER, et al.)
Defendant)

NO. 73 CR 169 (IBC)

DECLARATION OF URBAN J. DIDIER
IN SUPPORT OF MOTION TO DISMISS

I, URBAN J. DIDIER, declare:

I am the defendant in the above-entitled action.

Although I did waive time for the prior trial, I did so without complete knowledge of all the facts and circumstances of my rights. Although I was represented by counsel at the prior trial, I was not informed of the Stipulation Re Trial entered into by my former attorney, ROBERT M. TALCOTT, until after he had entered into the stipulation. Thus, I never made a knowing and voluntary waiver of my rights to a speedy trial. If I had known all the facts and circumstances, I would have requested that the trial be held immediately.

At the time of the retrial, I was not represented by counsel and I was never advised of my Sixth Amendment rights to proceed with the retrial immediately. Thus, I never voluntarily and knowingly waived my rights to a speedy trial.

The delay in bringing this case to retrial has caused me

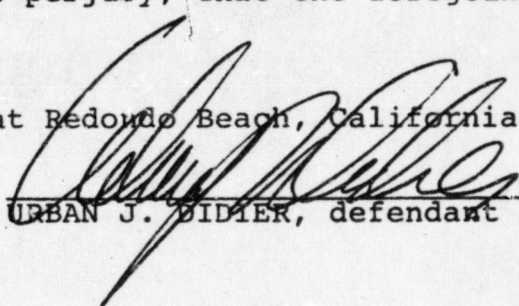
A-16

1 undue financial and mental hardship. This uncertainty would
2 have been removed by a prompt trial.

3 I did not retain Mr. RUDOLPH E. HARPER until approximate-
4 ly late April or early May of 1975. Mr. Talcott advised me that he
5 would not be able to proceed further as my counsel without paymen
6 and I was without funds in order to continue my relationship with
7 Mr. Talcott approximately JANUARY, 1974.

8 I declare, under penalty of perjury, that the foregoing
9 is true and correct.

10 Executed on June 27, 1975 at Redondo Beach, California

11 
12 URBAN J. BIDIER, defendant
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RUDOLPH E. HARPER
ATTORNEY AT LAW
2706 ARTESIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 376-8777

A-16-1

VERIFICATION BY PARTY (446, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am the _____

in the above entitled action or proceeding; I have read the foregoing _____

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on _____ at _____, California
(date) (place)

Signature

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

2706 Artesia Blvd. Redondo Beach, Ca 90278

On 6/27/75, 19_____, I served the within Declaration of URBAN J.

DIDIER in support of Motion to Dismiss

on the United States Attorney for the S. District of N.Y.
in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
United States mail at Redondo Beach
addressed as follows:

Robert Gold
Assistant United States Attorney
United States Attorney Office
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

HONORABLE IRVING BEN COOPER
U.S. District Judge
Southern District of N.Y.
U.S. Courthouse, Foley Sq.
N.Y. N.Y. 10007

I declare, under penalty of perjury, that the foregoing is true and correct.

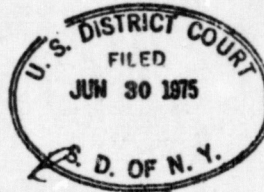
Executed on 6/30/75 at Redondo Beach, California
(date) (place)

yvette weinstein
Signature
/s/yvette weinstein

H16-2

(SPACE BELOW FOR FILING STAMP ONLY)

1 RUDOLPH E. HARPER
2 ATTORNEY AT LAW
3 2706 ARTESIA BOULEVARD
4 REDONDO BEACH, CALIFORNIA 90278
5 TELEPHONE 276-8777



6 Attorney for Defendant

7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF NEW YORK

10
11 UNITED STATES OF AMERICA,)
12 Plaintiff,) NO. 73 CR 169 (IBC)
13 vs.) NOTICE OF MOTION TO DISMISS
14 URBAN J. DIDIER, et al.,)
15 Defendant.)
16

17
18 PLEASE TAKE NOTICE that upon the annexed affidavit and
19 upon all the proceedings heretofore had herein, the undersigned
20 will move this Court on the _____ day of _____, in the _____
21 Building, at _____, or as soon thereafter
22 as counsel may be heard, for an Order to Dismiss the above-entitled
23 action.

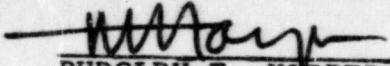
24 The motion will be made on the grounds that the defend-
25 ant URBAN J. DIDIER'S retrial was not brought at the earliest
26 practicable time, i.e. not later than 90 days.

27 The motion will be based on this notice of motion, on the
28 Declaration of RUDOLPH E. HARPER and Memorandum of Points and
29 Authorities served and filed herewith, on such supplemental declar-
30 ations, affidavits, and memoranda of points and authorities as here-
31 after may be filed with the Court, on all the papers and records on
32 file in this action, and on such oral and documentary evidence as

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1 may be presented at the hearing of the motion.

2 DATED: June 18, 1975


RUDOLPH E. HARPER, Attorney
for Defendant Didier

RUDOLPH E. HARPER
ATTORNEY AT LAW
2706 ARTESIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 376-8777

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A-18

VERIFICATION BY PARTY (446, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am the _____

in the above entitled action or proceeding; I have read the foregoing _____

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on _____ at _____, California
(date) (place)

Signature

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

~~2706 Artesia Blvd. Redondo Beach, California 90278~~

6/24/75

On _____, 19____, I served the within Notice of Motion to

Dismiss _____

on the United States Attorney for the So. District of New York
in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
United States mail at Redondo Beach, California
addressed as follows:

Robert Gold
Assistant United States Attorney
United States Attorneys Office
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

HONORABLE IRVING BEN COOPER
United States District Judge
Southern District of N.Y.
U.S. Courthouse, Foley Sq.
N.Y. N.Y. 10007

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on 6/24/75 at Redondo Beach, California
(date) (place)

Yvette Weinstein

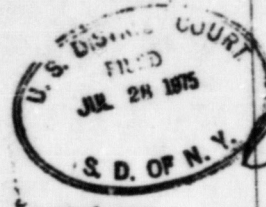
Signature
/s/ Yvette Weinstein

A-19

*GOVERNMENT'S OPPOSING AFFIDAVIT
DATED 7/14/75*

RG:nc
n-442

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

- v -

URBAN J. DIDIER and EDWARD ASHDOWN,
Defendants.

AFFIDAVIT

73 Cr. 169 (IBC)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT GOLD, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and represent the United States in the above-captioned matter. Accordingly, I respectfully submit this affidavit in opposition to the motion made on behalf of the defendant Urban J. Didier to dismiss the indictment herein for lack of speedy prosecution.

2. On May 22, 1974 the Government filed its Notice of Readiness to re-try the co-defendants Urban J. Didier and Edward Ashdown on Indictment No. 73 Cr. 169.

3. By letter dated June 10, 1974, a copy of which is annexed hereto as Exhibit "A", the Government requested that the re-trial of the co-defendants Didier and Ashdown be set down for the Fall of 1974 in order to allow sufficient time for the United States Court of Appeals for the Fifth Circuit to decide Mr. Ashdown's appeal from a mail fraud conviction for which he had been sentenced to imprisonment for a period of seven years. The Government's request was made after discussions with Mr. Ashdown's attorney, Edward Panzer, Esq. and without any objection from him or his client.

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4. By letter dated June 17, 1974, a copy of which is annexed hereto as Exhibit "B", Judge Cooper's chambers advised the United States Attorney's office that the re-trial of this matter would be set down for the Fall of 1974.

5. Apparently, Mr. Ashdown's appeal remained sub judice through the end of 1974 and was not affirmed until sometime in the Winter or Spring of 1975.

6. In urging the dismissal of the indictment herein, Didier principally relies on the Second Circuit's February 11, 1975 pronouncement in United States v. Drummond, 511 F.2d 1049, 1051 (2d Cir. 1975) to the effect that "where a new trial has been ordered by an appellate court, it shall commence at the earliest practicable time, but in any event not later than 90 days after the finality of such order unless extended for good cause."

7. Although the Drummond decision did not appear to be directly applicable to this case (inasmuch as this case did not involve "a new trial ordered by an appellate court"), shortly after the Second Circuit rendered its Drummond decision, out of an abundance of caution, I attempted to contact the Hon. Irving Ben Cooper, United States District Judge, in order to arrange for a prompt re-trial herein. I was advised that Judge Cooper, in an effort to assist distant districts with pressing judicial business, would be sitting outside the Southern District of New York from on or about February 17, 1975 to on or about March 14, 1975.

4. By letter, dated March 25, 1975, a copy of which is annexed hereto as Exhibit "C", I requested that this Matter be scheduled for trial "on a date certain as

soon as possible in the convenience of the Court." A copy of this letter was mailed to Didier's counsel, Robert Talcott, Esq. at his last known address: 910 Union Bank Plaza, 15233 Ventura Blvd., Sherman Oaks, California 91403.

9. The Court promptly responded to my letter of March 25th; by letter dated March 27, 1975, the Court directed that all counsel appear at a pre-trial conference on April 2, 1975 for the purpose of fixing a trial date hereinafter. A copy of Judge Cooper's letter was also sent directly to Mr. Talcott at the above-mentioned Sherman Oaks address. However, without having notified either the Court or the United States Attorney's Office, Mr. Talcott had moved his offices to 10850 Wilshire Blvd., Los Angeles, Calif. 90024. Thus, the copies of my letter of March 25th and the Court's letter of March 27th which had been sent to Mr. Talcott at his Sherman Oaks address never reached him but were returned unopened.

10. Upon the return of these letters, at the Court's direction I telephoned Mr. Talcott at his new office (213-981-7766) to inform him of the Court's direction that he appear for a pre-trial conference at which time a date for the re-trial of this matter would be fixed. Mr. Talcott stated that he had not been paid for having represented Mr. Didier at the first trial and, therefore, was uncertain as to whether he would continue to represent Mr. Didier in connection with the re-trial. Mr. Talcott did agree to advise me on or before April 9, 1975 as to whether he would represent Mr. Didier at the re-trial. Mr. Talcott eventually informed me that he would not represent Mr. Didier and that he did not know whether Mr. Didier would retain new counsel or seek court-appointed counsel. In

turn, I suggested that Mr. Didier contact me in the event that he desired to seek court-appointed counsel. Sometime in or about late April, or early May Mr. Didier called me to advise me that he was going to retain Rudolf E. Harper, Esq., as his new lawyer.

11. Mr. Harper attended the pre-trial conference on June 12, 1975 and, on Mr. Didier's behalf, advised the Court that he would be ready to try this case on September 2, 1975.

12. Thus, it is clear from the foregoing that:
(i) the re-trial of Didier and Ashdown did not occur during 1974 because the Court and the Government were anxious to avoid having to try Didier and Ashdown separately and thereby needlessly consume the time of the District Court; (ii) both the Court and the Government were prepared to go forward with the re-trial of this case within 90 days from February 11, 1975, the date of the Drummond decision --- at which time the United States Attorney's Office was first put on notice by the Second Circuit of the possibility that the re-trial of this matter might arguably be subject to the provisions of Rule 6 of the Plan For Achieving Prompt Disposition of Criminal Cases even though the anticipated re-trial herein was not "ordered" by either the District Court or by the Court of Appeals; and (iii) the re-trial of this case did not occur within 90 days of the Drummond decision solely because of the above-described conduct of Mr. Didier and his then attorney, Mr. Talcott.

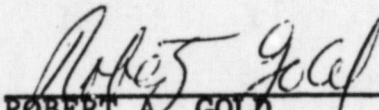
13. Didier and his new counsel also urge in their moving papers that by not having received a prompt re-trial Didier has suffered undue prejudice. This claim is plainly

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n-442


more illusory than real. Prior to the first trial in this case, Didier's lawyer drafted and filed a written waiver of Didier's right to a speedy trial. And although both Didier and his new counsel now urge for the first time that Didier did not knowingly waive his right to a speedy trial, Didier did execute the waiver, a copy of which is annexed as Exhibit "A" to Didier's moving papers. By doing so, Didier put the Court and the Government on formal notice that with respect to his trial on the instant indictment, time was not of any importance whatsoever.

14. Didier also claims to have suffered emotional stress which could have been removed by his having received a prompt re-trial. Curiously enough, from the time of the filing of the waiver of Didier's right to a speedy trial up to the filing of this application, neither Didier nor his counsel has taken the slightest step to indicate to either the Court or the Government that Didier's interest in a prompt trial had suddenly become re-vitalized.

13. For all of the foregoing reasons, the Government respectfully submits that Didier's motion to dismiss the indictment herein is utterly without merit and should be denied in all respects.


ROBERT A. GOLD
Assistant United States Attorney

Sworn to before me this


14th day of July, 1975.

A-24

RG:cmw

AC

June 10, 1974

Honorable Irving Ben Cooper
United States District Judge
Room 2904
United States Courthouse
Foley Square
New York, New York 10007

Re: United States v. Didier and Ashdown
(73 Cr. 169)

Dear Judge Cooper:

I am writing at Mr. Gerber's request to set forth the Government's position with respect to the defendant Edward Ashdown.

I have been advised by Mr. Ralph Harris, an Assistant United States Attorney in the Southern District of Texas, that in June of 1973 Mr. Ashdown was convicted of mail fraud in that district and sentenced to seven years' imprisonment. Following his conviction, Mr. Ashdown's brief on appeal was due to be filed in September of 1973 (prior to the trial of the above-entitled matter) but due to several motions for an adjournment--purportedly for the purpose of obtaining new counsel--Mr. Ashdown's brief was not filed until May 1974.

The Government's reply brief was filed a few days ago and now both sides are awaiting word from the United States Court of Appeals for the Fifth Circuit as to whether there will be oral argument. Mr. Harris has further informed me that if the Court of Appeals decides to have oral argument, it would be scheduled for September 1974.

This office would strongly prefer to await the outcome of Mr. Ashdown's appeal so that if his conviction is affirmed he could be severed and granted immunity and the defendant Didier

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BEST COPY AVAILABLE

Honorable Irving Ben Cooper

-2-

June 10, 1974

could be re-tried alone. Hopefully, the retrial against a single defendant would be considerably less time-consuming than was the first trial against both defendants.

On the other hand, if your Honor is unwilling to await the Fifth Circuit's decision regarding Mr. Ashdown and intends to set the re-trial down for a date in July or August, this office would have to consider the possibility of severing Mr. Ashdown in any event.

Under all the circumstances it would appear that the interests of justice might best be served by setting this matter down for re-trial in the Fall. By so doing, the interests of both defendants would not be impaired.

Respectfully yours,

PAUL J. CURRAN
United States Attorney

By: _____

ROBERT GOLD
Assistant United States Attorney
Telephone: (212) 264-6341

A-26

JUDGE'S CHAMBERS
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
NEW YORK, NEW YORK 10007

IRVING BEN COOPER
JUDGE

June 17, 1974

Robert Gold, Esq.
Assistant United States Attorney
United States District Courthouse
New York, New York 10007

Re: U.S.A. v. DIDIER & ASHDOWN
73 Cr. 169

Dear Mr. Gold:

Judge Cooper has read your informative letter of the 10th and thanks you for your painstaking efforts. He agrees with your position. The retrial will be set down for next Fall.

Very truly yours,

Margaret T. McDaid
(Mrs.) Margaret T. McDaid
Secretary to Judge Cooper

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A-27

RG:sk

March 25, 1975

Honorable Irving Ben Cooper
United States District Judge
Room 2904
United States Courthouse
Foley Square
New York, New York 10007

Re: United States v. Urban Didier
and Edward Ashdown
73 Cr. 169

Dear Judge Cooper:

I respectfully request that this matter be
set down for trial on a date certain as soon as possible
in the convenience of the Court.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: _____
ROBERT GOLD
Assistant United States Attorney

cc: Robert Talcott, Esq.
910 Union Bank Plaza
15233 Ventura Blvd.
Sherman Oaks, Calif 91403
Attorney for Urban Didier

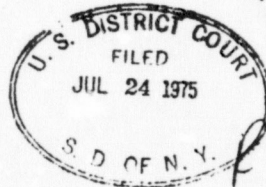
Edward Panzer, Esq.
299 Broadway, Room 605
New York, New York 10007
Attorney for Mr. Ashdown

A 28

APPELLANT'S REPLY AFFIDAVIT

(SPACE BELOW FOR FILING STAMP ONLY)

RUDOLPH E. HARPER
ATTORNEY AT LAW
2706 ARTERIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 878-8777



Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

URBAN J. DIDIER and EDWARDASHDOWN,

Defendants.

DECLARATION OF RUDOLPH E.
HARPER IN OPPOSITION TO
AFFIDAVIT OF ROBERT A.
GOLD

73 Cr. 169 (IBC)

I, RUDOLPH E. HARPER, Attorney for defendant URBAN J.

DIDIER, in response to "Affidavit" of Robert A. Gold, declare:

1. That the "Motion to Dismiss" is based on a
violation of the defendant's constitutional right to a speedy trial.

2. That the right to a speedy trial is further out-
lined in Rule 6 Second Circuit Rules regarding Prompt Disposition of
Criminal Cases.

3. Rule 6 is further clarified and guidelines es-
tablished in the case of United States v Drummond, 511 F 2d 1049
(1975).

4. Guidelines as established are clear and decisive.
The Court of Appeals will not tolerate a delay in retrial beyond this
90 day time period. This rule not being retroactive, therefore, did
not apply to this case prior to the Court's decision.

However, by Mr. Gold's "Affidavit", the Government
filed a Notice of Readiness to re-try this case on May 22, 1974, and
requested a retrial for the Fall of 1974.

5. Clearly, a retrial of this defendant in the Fall
of 1974, would have created no problems or conflict with Mr. Didier's

A-29

RUDOLPHE HARPER
ATTORNEY AT LAW
2708 ARTERIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 376-7777

1 constitutional right to a speedy trial; but from that time forward,
2 it appears that the delay was caused solely by the Government's
3 interest in allowing co-defendant Edward Ashdown to appeal his
4 conviction on mail fraud and await decision on this appeal.

5 6. There is reason to believe that the Government
6 was more than mildly interested in the Appellate Court's decision
7 regarding Mr. Ashdown and was considering an offer of immunity to
8 Mr. Ashdown in return for Mr. Ashdown's testimony in this retrial.

9 7. Clearly, this delay in retrial, is an abuse of
10 process, in that delaying a trial for one defendant, in the hope of
11 obtaining perhaps damaging testimony from a co-defendant, is in
12 violation of the other defendant's constitutional right to a speedy
13 trial.

14 8. It appears that the delay to date has centered
15 around Mr. Ashdown and not Mr. Didier. It has also come to my
16 attention that Mr. Ashdown may not be available on the presently
17 scheduled trial date. This potential absence of Mr. Ashdown would
18 in effect make a mockery of the Government's attempt to justify
19 this delay.

20 9. Mr. Gold states that letters were sent to Mr.
21 Robert Talcott and returned to the United States Attorney's office in New
22 York. The defendant in this case has maintained the same phone
23 number and address as he had when he went to trial the first time.
24 Therefore, if it is Mr. Gold's contention that he was unable to
25 communicate certain information to Mr. Didier, this contention is
26 more illusory than real and thus without merit.

27 10. It is admitted that the Court and the Government
28 were anxious to avoid two trials if one would suffice, but surely,
29 this interest is not so great as to risk doing away with a constitu-
30 tional safeguard. This "safeguard" is to prevent such a prospect
31 from hanging over the head of a defendant. This apprehension of
32 possible retrial prevents a defendant from carrying on a normal

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RUDOLPH E. HARPER
ATTORNEY AT LAW
2708 ARTEZIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 376-8777

1 business relationship and creates a constant cloud over his
2 integrity. To suggest that there is no suffering, no damage to
3 the character and mind, is a gross misconception of what happens
4 to an innocent person accused and unable to extricate himself from
5 the clutches of the Government, who may have other interests and
6 thus is not sufficiently motivated to promptly dispose of the case.

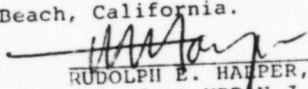
7 11. The Court of Appeals is certainly aware of the
8 Government's lackadaisical approach to some cases which prompted
9 an appeal as per the Drummond case, supra.

10 12. Mr. Didier's acquiescence to the "waiver" ex-
11 pired on November 26, 1973, which was the original date set for
12 trial and to construe such a waiver as a continuing waiver offers
13 no end to the Government's prospects of interpreting this waiver-
14 doctrine to their favor and thus acting accordingly.

15 13. The Government has the awesome power to hurt
16 both physically and emotionally its citizens, and delaying a
17 disposition, is just another example of such misuse of this power.
18 The safeguards of a speedy retrial must be recognized by both the
19 Government and the courts as the Appellate Court recognized in the
20 Drummond case.

21 For the above reasons, the defendant URBAN J. DIDIER
22 prays that the Order to Dismiss be granted.

23 I declare under penalty of perjury that the fore-
24 going is true and correct and that this declaration was executed
25 on July 21, 1975, at Redondo Beach, California.

26 
27 RUDOLPH E. HARPER, Attorney for
28 defendant URBAN J. DIDIER
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VERIFICATION BY PARTY (446, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am the

in the above entitled action or proceeding; I have read the foregoing

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on (date) at (place), California

Signature

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

2706 Artesia Blvd. Redondo Beach, Ca 90278

On 7/21/75, 19____, I served the within Declaration of Rudolph E.

Harper, in Opposition to Affidavit of Robert A. Gold

on the United States Attorney for the S. District of N.Y.

in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Redondo Beach, Ca

addressed as follows:

Robert Gold
Assistant US Attorney
US Attorneys Office
Southern District of NY
US Courthouse
Foley Sq.
New York, NY 10007

HONORABLE IRVING BEN COOPER
US District Judge
Southern District of NY
US Courthouse, Foley Sq
New York, NY 10007

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on 7/21/75 at Redondo Beach, California
(date) (place)

Signature

/s/yvette weinstein

A32

OPINION OF 7/26/75

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

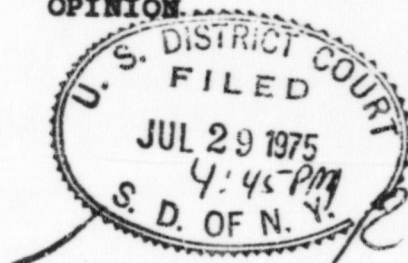
-against-

URBAN J. DIDIER and
EDWARD ASHDOWN,

Defendants.
-----X

73 Cr. 169

OPINION.



APPEARANCES:

HON. PAUL J. CURRAN
United States Attorney for the
Southern District of New York
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007

Attorney for the United States
of America

ROBERT GOLD, ESQ.
Assistant United States Attorney
Of Counsel

RUDOLPH E. HARPER, ESQ.
2706 Artesia Blvd.
Redondo Beach, California 90278

Attorney for Defendant Didier

IRVING BEN COOPER, D. J.

MICROFILM

JUL 30 1975

A-33/

Defendant Didier moves to dismiss the indictment on the ground that he was deprived of his right to a speedy trial, secured by both the Southern District Plan for Achieving Prompt Disposition of Criminal Cases ("Southern District Plan") and the Sixth Amendment to the Constitution.

On February 16, 1973 Indictment 73 Cr. 169 was filed charging defendants Didier, Ashdown and Lombardozzi with conspiracy (Count One), additionally Didier and Lombardozzi with the substantive crime of interstate transportation of stolen securities (Count Two), in violation of 18 U.S.C. §§371 and 2314, respectively.

On November 26, 1973 defendants Didier and Ashdown commenced a jury trial before us.¹ The jury began their deliberations on December 3, 1973. Upon learning that the jury was hopelessly deadlocked, we declared a mistrial.

-
1. On that same date Lombardozzi pled guilty to Count One of the indictment. On September 27, 1974 we sentenced Lombardozzi to eighteen months imprisonment, pursuant to 18 U.S.C. §4208(a)(2).

On May 22, 1974 the Government filed its Notice of Readiness to proceed with the retrial of Didier and Ashdown on or after May 23, 1974. In a letter dated June 10, 1974 the Government requested that the retrial be set down for the fall of 1974 in order to allow sufficient time for the United States Court of Appeals for the Fifth Circuit to decide Ashdown's appeal from his mail fraud conviction in the Western District of Texas. We recognized as meritorious the Government's position and so by letter dated June 17, 1974 we scheduled the trial of these two defendants for the fall of 1974. Ashdown's conviction was affirmed by the Fifth Circuit on March 17, 1975. United States v. Ashdown, 509 F.2d 793 (1975).

On March 25, 1975 the Government promptly and properly requested the immediate retrial of the defendants. On March 27 by letter we scheduled April 2, 1975 for a conference of all parties concerned. Copies of both letters were sent to Didier's attorney, Robert Talcott, Esq., a resident of California. However, he had changed his address without notifying either the Court or the Government and the letters were returned unopened.

At the end of April 1975, Mr. Talcott informed the Government he would not represent Didier at the retrial of this case because Didier had refused to pay him for legal services rendered at his first trial, and that Rudolf Harper, Esq., another California attorney, would replace him. Mr. Harper confirmed Mr. Talcott's representation at a conference called by the Court on June 12, 1975 at which we fixed September 2, 1975 as the definite date for retrial. (On July 16, 1975, the present whereabouts of co-defendant Ashdown being unknown, we issued a bench warrant for his arrest.)

In his present motion Didier claims he was denied his right to a speedy trial under the Southern District Plan and the Sixth Amendment. For the reasons that follow we reject his contentions and deny his motion in its entirety.

I. Didier's Claim under Rule 6
of the Southern District Plan

Didier's principal contention is that the Government violated Rule 6 of the Southern District Plan.² Rule 6 of the Southern District Plan provides:

2. The Southern District Plan went into effect on April 1, 1973.

Retrials

Where a new trial has been ordered by the district court or a trial or new trial has been ordered by an appellate court, it shall commence at the earliest practicable time, but in any event not later than 90 days after the finality of such order unless extended for good cause.

Didier claims his right to a speedy trial was violated here since a second trial was not commenced within 90 days of our declaration of a mistrial on December 3, 1973.

In opposition, the Government raises two arguments: first, that Didier waived his right to a speedy trial under the Southern District Plan by a signed stipulation, and second, since it misunderstood the changes effected by the Southern District Plan, the 90 day time period for retrials should be extended for "good cause."

On September 18, 1973 Didier entered into a stipulation with the Government, signed by him and his former attorney, Mr. Talcott. The stipulation provides in pertinent part:

The defendant URBAN J. DIDIER gives up and waives his right to have been present for the trial setting, and further waives his right to a speedy trial.

Several factors support the validity of this waiver: both Didier and his attorney signed it; it bears no extrinsic indicia of coercion; until July 2, 1975 when Didier filed his sworn affidavit in support of the instant motion, he never attempted to disavow or renounce the waiver.

It is well-settled in this District that where there has been a mistrial the effect is the same as if there had been no trial at all. United States v. Gladding, 265 F.Supp. 850, 854 (S.D.N.Y. 1966). Consequently,

[s]ince following the mistrial the status of this prosecution was as if there had been no trial at all, defendant's constitutional right to a speedy trial was revived. Id.

Accordingly, although we entertain no doubt that the stipulated waiver foreclosed any claims that Didier might make regarding a speedy trial in November 1973, we have concluded that once a mistrial was declared his right to a speedy trial was revived.

We are constrained to reject the Government's contention of waiver on constitutional grounds. We rely on Barker v. Wingo, 407 U.S. 514, 525-26 (1972):

Courts should "indulge every reasonable presumption against waiver," Aetna Ins. Co. v.

Kennedy, 301 U.S. 389, 393 (1937), and they should "not presume acquiescence in the loss of fundamental rights." Ohio Bell Tel. Co. v. Public Utilities Comm'n, 301 U.S. 292, 307 (1937).

We find it difficult to presume that by stipulation Didier intended to waive forever his right to a speedy trial. We observe that in his affidavit he alleges, inter alia, that he did not consciously waive his future right to a speedy trial. (Didier Aff., p. 1) Since we reject the Government's arguments, we hold that Didier did not waive by stipulation his right to a speedy trial.

We find more merit in the other argument raised by the Government in opposition to Didier's Rule 6 claim. In substance, the Government contends that prior to the Second Circuit's ruling in United States v. Drummond, 511 F.2d 1049 (1975), it was confused as to which provision governed the period in which to commence the retrial of the defendants: Rule 6 of the Southern District Plan, which required actual commencement of retrial within 90 days of the mistrial, or Paragraphs 4 and 6 of the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases ("Second Circuit Rules")³ which required the Government to be

3. The Second Circuit Rules were adopted on January 5, 1971. Paragraph 4 mandates that the Government must

ready for trial within six months of the mistrial. In brief, the Government urges that, as in Drummond, supra at 1054, the 90 day time period for retrial should be extended for "good cause."

The Court in Drummond rejected an argument virtually identical to that advanced by Didier. It held it would not dismiss the indictment although the U. S. Attorney for the Eastern District had violated Rule 6 of the Eastern District Plan for Achieving Prompt Disposition of Criminal Cases⁴ by not retrying

Footnote 3 cont'd

be ready for trial within six months of specified times, e.g., indictment, arrest, etc., upon pain of dismissal. Paragraph 6 of the Second Circuit Rules provides in pertinent part: "If the defendant is to be retried following a mistrial...the time shall run from the date when the order occasioning the retrial becomes final." Accordingly, here, under the Second Circuit Rules, the Government had to be ready to retry these defendants by June 3, 1973.

4. Rule 6 of the Eastern District Plan is identical with Rule 6 of the Southern District Plan.

Drummond within 90 days of a Second Circuit order reversing his conviction. In so ruling the Court stated:

[T]he prosecution was ready to try Drummond again without undue delay and obviously misapprehended the change brought about by the Eastern District Plan adopted a few months before. The new Rule [6] was a departure from the former requirement of prosecutorial readiness only, which still permeated the rest of the Plan. Rule 6 does not mention any sanctions and was adopted without any published focus on the change for retrials. Id., at 1053. (emphasis supplied)

The Court concluded that "[u]nder all the circumstances, we regard the relevant time period as extended 'for good cause.'" Id., at 1054.

The principles enunciated in Drummond were re-emphasized in United States v. Roemer, 514 F.2d 1377 (2d Cir. 1975). In Roemer the Court rejected defendant's contention that he was denied a speedy trial pursuant to Rule 6 of the Southern District Plan because he was tried more than 90 days after an appellate court ordered him to trial for the first time. After ruling preliminarily that the "Retrials" caption in Rule 6 encompassed cases in which an appellate court orders a first trial, id. at 1380-81, the Court stated:

Since Drummond was not decided until Feb. 11, 1975, the court and government obviously lacked in the instant case the advantage of Drummond's clarification of the rule's focus on the trial itself. The same considerations which counseled an indulgent view in Drummond of delay resulting from a construction of Rule 6 in terms of readiness for trial rather than actual commencement of trial apply with equal force in this case.

* * * * *

We therefore reject [Roemer's] contention that Rule 6 of the Southern District's plan requires dismissal of the indictment. A number of mishaps and mistaken assumptions generated the delay beyond 90 days and provided "good cause," within the meaning of Rule 6, for such delay. Id., at 1382.

The policy of both Drummond and Roemer applies directly here. In the instant case, the Government plainly misunderstood the applicability of Rule 6 of the Southern District Plan and the Second Circuit Rules. The genuineness of its confusion is attested to by several factors. A strict reading of Rule 6 of the Southern District Plan may well have lead the Government to the false assumption that mistrials -- not mentioned in the Rule 6 -- were not governed by the Southern District Plan.⁵

5. Compare, Paragraph 6 of the Second Circuit Rules, note 3, supra, which explicitly states that mistrials fall within its provisions. However, for the reasons set forth

Further, the Government filed its Notice of Readiness for retrial on May 22, 1974 -- well within the applicable period of the Second Circuit Rules -- under the obvious assumption that the Second Circuit Rules applied. Finally, upon learning of the Drummond decision, the Government moved expeditiously to secure a retrial of these defendants. Any delay subsequent to March 1975 is obviously attributable to Didier himself and the failure of his former attorney, Mr. Talcott, to inform the Court of a change in counsel.

In sum, the Government's failure here, as in Drummond and Roemer, to bring about a prompt retrial was based wholly on misunderstanding. We accept the explanation and hold that the 90 day period of Rule 6 of the Southern District Plan should be extended for "good cause." Accordingly, we reject Didier's claim based on Rule 6.

Footnote 5 cont'd

in Roemer, supra at 1380-81, we hold that the "Retrials" provision of Rule 6 extends to mistrials. See also, The Speedy Trial Act of 1974, 18 U.S.C. §3161(e); N.Y. Crim. P. Law §30.30(5).

II. Didier's Sixth Amendment Claim

Didier's claim that he was denied his right to a speedy trial as guaranteed under the Sixth Amendment has little merit. In the leading case of Barker v. Wingo, supra, the Supreme Court outlined four factors that must be balanced in order to assess the validity of a speedy trial claim: (1) length of delay, (2) reason for the delay, (3) defendant's assertion of his right, and (4) prejudice to the defendant. Id., at 530. Applying that balancing test here, we conclude that Didier was not denied his constitutional right to a speedy trial. We have already dealt with (1) and (2). As to (3) and (4): Didier failed to assert his right to a speedy trial, and there is an absence of any prejudice to him. As noted, supra p. 6, until July 1975, Didier did not assert his right to a speedy trial. We point out that, as in Drummond and Roemer, Didier was free on bail during the relevant period. His silence during these past months stands in sharp contrast to his present clamoring. In addition, we discern no cognizable prejudice. Didier complains of financial and mental hardship. However, he has not sought to substantiate them. In comparison, Barker requires a showing of actual, concrete prejudice. Id., at 532-33.

A part of the total delay was attributable to our concern over wasting judicial effort by conducting separate trials for Didier and Ashdown.

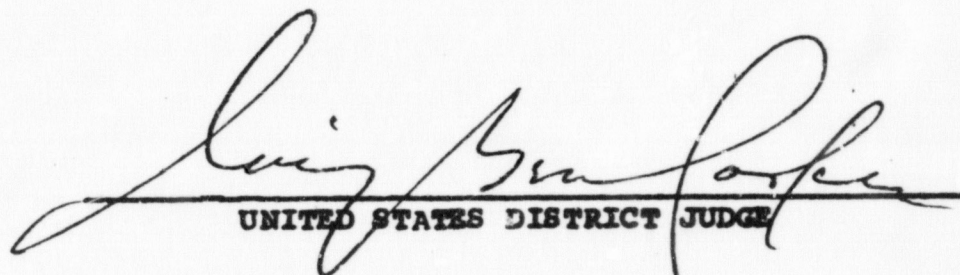
Since we find that Didier has failed to satisfy the balancing test of Barker, his claim based on a denial of his Sixth Amendment right to a speedy trial must be denied.

Simply put, we do not countenance the lapse of approximately eighteen (18) months between trials. The time accounting reflected herein, however, leaves us no alternative, if justice is to be done the Government and defendants alike, : trial date (as heretofore fixed) September 2, 1975.

Motion denied in all respects.

SO ORDERED:

New York, N.Y.
July 26, 1975


UNITED STATES DISTRICT JUDGE

APPELLANT'S MOTION TO DISMISS
dated 12/30/75

(SPACE BELOW FOR FILING STAMP ONLY)

RUDOLPH E. HARPER
ATTORNEY AT LAW
2706 ARTERIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 376-8777



Attorney for Defendant Didier

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

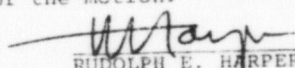
UNITED STATES OF AMERICA : 73 Cr. 169 (IBC)
-v- : NOTICE OF MOTION TO DISMISS
URBAN J. DIDIER :
and EDWARD ASHDOWN, :
Defendants. :

PLEASE TAKE NOTICE that upon the annexed affidavit and upon all the proceedings heretofore had herein, the undersigned will move this Court on the _____ day of _____, in the Building, at _____, or as soon thereafter as counsel may be heard, for an Order to Dismiss the above-entitled action.

The motion will be made on the grounds that defendant URBAN J. DIDIER'S retrial was on brought at the earliest practicable time, i.e. not later than 90 days.

The motion will be based on this notice of motion, on the Declaration of RUDOLPH E. HARPER, and Memorandum of Points and Authorities served and filed herewith, on such supplemental declarations, affidavits, and memoranda of points and authorities as hereafter may be filed with the Court, on all the papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing of the motion.

Dated: December 30, 1975


RUDOLPH E. HARPER for Mr. Didier

13
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VERIFICATION BY PARTY (440, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am the

in the above entitled action or proceeding, I have read the foregoing

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on 12/30/75 at Redondo Beach, California

Signature

PROOF OF SERVICE BY MAIL (1012a, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

2706 Artesia Blvd. Redondo Beach, Ca 90278

On 12/30/75, I served the within Declar of POints and

Authorities

US Attorney for S. District of NY

on the in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the Redondo Beach, Ca

United States mail at

addressed as follows:

JOHN P. Cooney, Jr.
Assistant U.S. Attorney
U.S. Attorney's Office
Southern District of New York
United States Courthouse
Foley Sq
NY, NY 10007

HONORABLE IRVING BEN COOPER
U.S. District Judge
Southern District of NY
United States Courthouse
Foley Sq
NY, NY 10007

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on 12/30/75 at Redondo Beach, California

Signature

/s/yvette weinstein

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(SPACE BELOW FOR FILING STAMP ONLY)

RUDOLPH E. HARPER
ATTORNEY AT LAW
2706 ARTERIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 376-8777

Attorney for Defendant Didier

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : DECLARATION OF RUDOLPH E.
HARPER

-v-

73 Cr.169 (IBC)

URBAN J. DIDIER and EDWARD
ASHDOWN,

Defendants.

I, RUDOLPH E. HARPER, declare:

I am and at all times mentioned herein, was the attorney
of record for the defendant Urban J. Didier, in this action.

Argument #1: Speedy Trial

1. According to dictum laid down in United States v Drummond,
511 F2d 1049, "a new trial be commenced within ninety days unless
the period is extended for good cause." Second Circuit Rules Re-
garding Prompt Disposition of Criminal Cases, Rule 6,28 USCA.

Going further, under United States v Baillie, 316 F Supp
892 "the burden is on the Government to justify the delay."
Also in Hodges v United States, 169 CA 8 Mo F2d 543, assuming the
trial deferment doesn't offend the Speedy Trial Act of 1974, nor
the Second Circuit Rules, it absolutely increases the Government's
burden to justify such a delay.

Assuming at this point that failure of diligence is
attributable to the Court and the United States Attorney, who
under calendaring rules have the responsibility to assure prompt

15
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RUDOLPH E. HARPER
ATTORNEY AT LAW
3708 ANTERIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 376-8777

1 consideration of criminal cases, then the burden on the part of
2 the Government to show good cause cannot include "...conditions
3 in the United States Attorneys office, change of supervisors, loss
4 of personnel and increased backlog of pending cases..." United
5 States v Favolora, 493 F2d 623.

6 It appears that the Government's attitude in this case
7 has been to do nothing in the hope that co-defendant Edward Ash-
8 down, who is now a fugitive from justice, will be located, thus
9 saving the Government the burden of conducting two trials. While
10 this desire to save the Government as well as the taxpayers the
11 expense of two trials is meritorious, such merit may not offend
12 the constitutional rights of one defendant in favor of another.

13 Argument # 2: Delay Causing Undue Hardship

14 2. According to Barker v Wingo, 407 US 511 wherein the guide-
15 lines for establishing the defendants interests included...."to
16 minimize anxiety and concern of the accused..." while recognizing
17 that a prolonged delay may subject a defendant to emotional stress
18 due to the uncertainties. As the Court aptly stated in its opin-
19 ion denying defendant Didier's prior Motion to Dismiss, that the
20 defendant did not substantiate any financial or mental hardship
21 whereas Barker requires such a showing of actual, concrete pre-
22 judice. Ibid, p 532-33. However Mr. Didier's declaration wherein
23 he describes the torment and anxiety which he and his family went
24 through, the declaration of the Lieutenant Governor of the State
25 of California, as well as the declaration of the President of the
26 securities firm of Charles Snodgrass Company certainly attest to
27 the fact that Mr. Didier felt himself a "non-person" as he aptly
28 describes.

29 I further have personal knowledge of Mr. Didier's re-
30 lationship with Realty Investment Associates, Inc. (RIA), a fairly
31 successful real estate management firm doing business on a nation-
32 al level.

RUDOLPH E HARPER
ATTORNEY AT LAW
2706 ARTERIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 876-8777

1 Due to the fact that I have been corporate counsel for
2 about three years and at the time that Mr. Didier was indicted,
3 Mr. Hugh Pike, President of RIA sought my advice as to RIA's con-
4 tinuing with Mr. Didier as a vice president and I advised Mr. Pike
5 that Mr. Didier would be a liability to the corporation. Based on
6 my opinion, Mr. Didier was asked to submit his resignation, which
7 he did.

8 Mr. Didier was unemployed for a number of months follow-
9 ing his termination from RIA. After leaving RIA, I became assoc-
10 iated with Mr. Didier as his legal and business adviser and have
11 personal knowledge of his unsuccessful attempts to regain his
12 business status in the community.

13 Mr. Didier was forced to file bankruptcy on May 15, 1975.
14 # BK 75-08967, Central District of California. However, he did
15 manage to obtain secondary financing on his home in order to vol-
16 untarily dismiss the petition and satisfy his creditors.

17 I know that he has refused to get involved in many things
18 due to this indictment over his head. I suggested that he apply
19 for a real estate salesman's license which he refused but did
20 have his wife apply for and subsequently became a real estate
21 sales person.

22 Mr. Didier has continued to maintain a low-profile in
23 business thereby hindering his chances for success as well as
24 minimizing his income. His attitude as well as his self esteem
25 diminished to the point that he was afraid to take a step in any
26 direction for fear that disclosure of the indictment would surface
27 and cause another set back requiring him to start anew in another
28 field.

29 To him, this indictment came very close to robbing him
30 of his self-reliance; it was like a snake in the grass, ready to
31 strike at any time, destroying whatever he had managed to accomp-
32 lish at that time.

A 50

RUDOLPH E. HARPER
ATTORNEY AT LAW
2708 ACACIA BLVD.
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 376 8777

1 Today, he lives in morbid fear that his own secretary
2 and others close to him in business, will learn of his problem
3 and thereby lose whatever respect he has managed to earn. Mr.
4 Didier is not the ordinary class of criminal who lives by his
5 wits alone, he lives in the business world dealing with bankers,
6 and the higher echelons of business and politics. His dealings
7 involve maintaining good credit ratings, good recommendations from
8 his peers, ability to meet these types of individuals on their own
9 levels and not feel that they are compromising their standards by
10 merely associating with him.

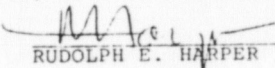
11 This indictment has prevented Mr. Didier from enjoying
12 a normal business relationship with anyone; and those whom he felt
13 close to, he was obligated to explain and apologize for his pre-
14 dicament. This alone is a very agonizing experience causing him
15 to withdraw from relating to many persons because of the desire
16 not to disclose. In his mind, disclosure would mean the end of
17 that relationship.

18 I agree with Mr. Didier that I believe the Court should
19 look behind the facade and see the man trying to maintain order
20 out of chaos; trying to maintain balance while the Government is
21 continually throwing him off balance.

22 While I believe a trial will vindicate Mr. Didier, I
23 believe he has suffered enough and I ask the Court to dismiss the
24 indictment on these grounds.

25 I declare, under penalty of perjury, that the foregoing
26 is true and correct.

27 Executed on December 23, 1975 at Redondo Beach, Calif.

28 
RUDOLPH E. HARPER
29
30
31
32

1 VERIFICATION BY PARTY (44a, 2015.5 C. C. P.)
2 STATE OF CALIFORNIA, COUNTY OF

3 I am the _____
4 _____
5 _____

6 in the above entitled action or proceeding; I have read the foregoing _____
7 _____
8 _____

9 and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which
10 are therein stated upon my information or belief, and as to those matters I believe it to be true.
11 _____
12 _____

13 I declare, under penalty of perjury, that the foregoing is true and correct.

14 Executed on _____ at _____, California
15 (date) (place)

16 _____
17 Signature

18 PROOF OF SERVICE BY MAIL (1013a, 2015.5 C. C. P.)

19 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

20 I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled
21 action; my business address is:

22 2706 Artesia Blvd. Redondo Beach, Ca 90278

23 On 12/30/75, 19_____, I served the within Declar. of Rudolph E.
24 Harper

25 on the US Attorney for S. District of NY
26 in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
27 United States mail at Redondo Beach, Ca
28 addressed as follows:

29 John P. Cooney, Jr.
30 Asst. U.S. Attorney
31 U.S. Attorney's office
32 S. District of NY
33 US Courthouse
34 Foley Sq.
35 New York, NY 10007

HONORABLE IRVING BEN COOPER
U.S. District Judge
S. District of NY
U.S. Courthouse
Foley Sq.
New York, New York 10007

36 I declare, under penalty of perjury, that the foregoing is true and correct.

37 Executed on 12/30/75 at Redondo Beach, California
38 (date) (place)

39 Juella Weinstein
40 Signature
41 /s/ Juella Weinstein

A52

(SPACE BELOW FOR FILING STAMP ONLY)

1 RUDOLPH E. HARPER
2 ATTORNEY AT LAW
3 2706 ARTERIA BOULEVARD
4 REDONDO BEACH, CALIFORNIA 90278
5 TELEPHONE 376-8777

6 Attorney for Defendant Didier

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF NEW YORK

9 -----x

10 UNITED STATES OF AMERICA : 73 Cr. 169 (IBC)

11 -v-

12 URBAN J. DIDIER
13 and EDWARD ASHDOWN,

14 Defendants.

DECLARATION OF URBAN J.
DIDIER IN SUPPORT OF MOTION
TO DISMISS AND DECLARATIONS
OF CHARLES SNODGRASS AND
MERVYN DYMALLY

15 -----:
16 I, URBAN J. DIDIER, declare:

17 I am the defendant in the above-entitled action.

18 I am currently a business manager in the County of Los
19 Angeles, State of California. The Government has failed to dil-
20 igently bring this action to trial so that a decision could be
21 reached thereby concluding the "limbo" status that I have been
22 under for almost two years.

23 This failure or refusal on the part of the Government has
24 caused me considerable mental and physical as well as financial
25 hardship. It has affected my business decisions to the point that
26 I have had to maintain a "non-person" status within my own mind.

27 I have been reluctant to enjoy the friendships of poli-
28 tical and financial leaders in the community and state, for fear
29 that should the knowledge of this indictment and pending trial
30 surface I would be embarrassed as well as shunned.

31 Many of my business associates would abandon me immed-
32 iately if they were aware of my status. The stigma that I endure

16
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RUDOLPH E. HARPER
ATTORNEY AT LAW
3705 ASTORIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 378-8777

1 is not taken lightly and should have been resolved a long time ago.
2 Among the ways that I have suffered, I believe the hardest to
3 accept is my inability to pursue my chosen field, the securities
4 business.

5 Since the indictment and my subsequent arrest on Feb-
6 ruary 21, 1973, I have been precluded from the securities business.
7 I was offered the opportunity to join Snodgrass and Company, mem-
8 bers of the Pacific Coast Stock Exchange in early 1973, by its
9 President; this offer I felt I had to refuse because the indictment
10 would prevent me from being accepted for membership in the Exchange.
11 As a member of the firm, my income would have exceeded \$50,000,
12 which was considerably more than my actual income for 1972.

13 Through my former association with Shearson, Hammill and
14 Company, members of the New York Stock Exchange, I had been voted
15 to Allied Membership of the New York Stock Exchange, the American
16 Stock Exchange, and other major stock and commodity exchanges, and
17 because of this indictment I have been prevented from this type of
18 work.

19 Further, Lieutenant Governor Mervyn Dymally, of the
20 State of California, requested me to serve on the Advisory Committ-
21 ee of the Economic Development Commission of California and on the
22 Commission of the Californias; both of which I felt disclosure of
23 the indictment would not only jeopardize me, but would jeopardize
24 my efforts while serving on those commissions. Further, under
25 questioning, this disclosure could prevent me from becoming a mem-
26 ber of said commissions thereby causing embarrassment to myself
27 and my family, as well as to the Lieutenant Governor.

28 I served as vice president of Realty Investment Associates,
29 Inc., a California corporation (RIA), from 1972 through 1973, at
30 which time I was asked to resign because of my arrest and indict-
31 ment. This termination was because Realty Investment Associates,
32 Inc., was forming Real Estate Investment Trusts. Real Estate In-

A 54

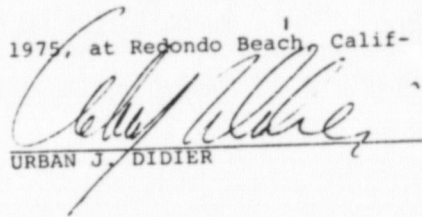
RUDOLPH E. HARPER
ATTORNEY AT LAW
2708 ARTERIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 376-8777

1 vestment Trusts and Real Estate Syndicates, each requires full and
2 complete disclosure of any criminal actions pending and such a
3 disclosure on my part would be tantamount to going out of business.

4 Further, upon leaving Realty Investment Associates, Inc.,
5 I was prevented from pursuing my second field of endeavor, Real
6 Estate, primarily investment counselling. The indictment prohib-
7 ited me from obtaining a real estate license, or for that matter
8 any professional license with the State of California.

9 I declare, under penalty of perjury, that the foregoing
10 is true and correct.

11 Executed on December 30, 1975, at Redondo Beach, Calif-
12 ornia.


URBAN J. DIDIER

RUDOLPH E HARPER
ATTORNEY AT LAW
2708 ADELPHI BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 376-8777

1 DECLARATION OF CHARLES SNODGRASS

2 I, Charles Snodgrass, declare:

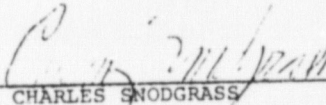
3 In February, 1973, I was the President of Snodgrass
4 & Company, Members of the Pacific Coast Stock Exchange, located
5 in the County of Los Angeles, State of California.

6 Knowing of Urban J. Didier's experience within the
7 Securities Industry I offered him an opportunity to become a
8 member of the firm. Mr. Didier accepted my offer and by mid-
9 February had completed all of the necessary papers to become
10 affiliated in the firm, however, his application with the Stock
11 Exchange was not finalized as he had to complete one final test
12 for the National Association of Securities Dealers scheduled for
13 early March, 1973.

14 At about the end of February, 1973, Mr. Didier came to
15 my office, thanked me for the generous offer, but asked that the
16 applications be withdrawn and explained the reason for his request.
17 Knowing that he could not be accepted for membership while under
18 indictment I concurred and his applications for membership were
19 withdrawn.

20 I declare, under penalty of perjury, that the foregoing
21 is true and correct.

22 Executed on December 20, 1975, at Los Angeles,
23 California.

24 
25 CHARLES SNODGRASS
26
27
28
29
30
31
32

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RUDOLPH E. HARPER
ATTORNEY AT LAW
2706 ARTEZIA BOULEVARD
REDONDO BEACH, CALIFORNIA 90278
TELEPHONE 378-8777

DECLARATION OF MERVYN DYMALLY

I, MERVYN DYMALLY declare:

I am the Lieutenant-Governor of the State of California.

Upon being elected to office in November of 1974, I sought the most able and capable member to serve on the various commissions which I am chairman.

I asked Mr. Urban J. Didier to serve on the Economic Development Commission of California and at the same time to serve on the Commission of the Californias. *Advisory Committee*

Mr. Didier graciously thanked me for the opportunity to so serve and at that time explained the reason for his refusal to serve.

I would like to offer Mr. Didier to serve again if the indictment is dismissed or the case is concluded in his favor.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on December 26, 1978 at Los Angeles, California.

Mervyn Dymally
MERVYN DYMALLY

VERIFICATION BY PARTY (446, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF

I am the

in the above entitled action or proceeding; I have read the foregoing

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on (date) at (place) California

Signature

PROOF OF SERVICE BY MAIL (1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

2706 Artesia Blvd. Redondo beach, Ca 90278

On 12/30/75, 1975, I served the within Declarations

on the US Government Attorney

in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Redondo Beach, Ca 90278 addressed as follows:

John P. Cooney, Jr.
Asst. U.S. Attorney
S. District of NY
US Courthouse
Foley Sq.
New York, N.Y. 10007

HONORABLE IRVING BEN COOPER
U.S. District Judge
Southern District of NY
United States Courthouse
Foley Square
NY, NY 10007

I declare, under penalty of perjury, that the foregoing is true and correct.

12/30/75 Redondo Beach
Executed on (date) at (place) California

Yvette Weinstein
Signature
/s/yvette weinstein

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AFFIDAVITS IN OPPOSITION

G:ma

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

- v - :

URBAN J. DIDIER and :
EDWARD ASHDOWN, :

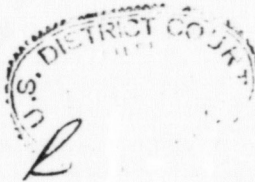
Defendants. :

----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK :
SOUTHERN DISTRICT OF NEW YORK)

AFFIDAVIT IN
OPPOSITION

73 Cr. 169 (I.B.C.)



ROBERT GOLD, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Thomas J. Cahill, United States Attorney for the Southern District of New York and I have been one of the Assistant United States Attorneys representing the United States in the above-captioned matter.

2. On or about July 17, 1975 Edward Panzer, Esq., defendant Ashdown's counsel, told me that he had not been able to contact his client for an extended period of time and that Ashdown's whereabouts were apparently unknown.

3. Aware that the United States Court of Appeals for the Fifth Circuit had recently affirmed Ashdown's conviction in the Southern District of Texas where he had been sentenced to a lengthy term of imprisonment, I was fearful that Ashdown had suddenly become a fugitive and therefore promptly made Mr. Panzer's information known to this Court and moved for the issuance of a bench warrant to assure

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Ashdown's presence at the trial of this matter which was scheduled to commence on September 2, 1975. Pursuant to the Government's application, on July 18, 1975 this Court issued a bench warrant for Ashdown's arrest.

4. On or about August 18, 1975 I was informed by United States Deputy Marshal Brown of the Southern District of New York that Ashdown had not yet been apprehended but that efforts were continuing to effect his arrest. I promptly brought this information to the Court's attention and specifically advised that the United States Marshals Service had not given me any reason to believe that Ashdown would be apprehended in time to stand trial with his co-defendant Didier on September 2, 1975.

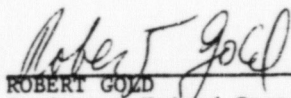
5. The prospect of having to try this case twice because Ashdown had suddenly become a fugitive and because the approximately thirty days which had elapsed since the issuance of the bench warrant had apparently proved insufficient to locate and arrest Ashdown was plainly unappealing. Thus, at the Government's request and in an effort to avoid the needless waste of time that would attend two successive trials, the trial date of this matter was adjourned sine die in order to afford the Government a fuller opportunity to apprehend the fugitive Ashdown and thereby secure his presence for a joint trial of the conspiracy charges against him and Didier.

6. Immediately following this Court's decision to postpone the trial I had a telephone conversation with Rudolf E. Harper, Esq., Didier's counsel, and informed him that the trial of this matter had been adjourned and

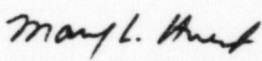
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the reasons for such an adjournment. I also instructed him that he should contact the Court directly if he objected to the adjournment. I was never advised that Didier or his counsel ever raised such an objection prior to the filing of their second motion to dismiss.

WHEREFORE, the government respectfully requests that the defendant Didier's motion to dismiss should be denied in all respects.


ROBERT GOLD
Assistant United States Attorney

Sworn to before me this
15th day of January, 1976.


MARY L. HUNT
Notary Public for the State of California
My Comm. Expires 12/31/77
My Comm. No. 123456

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JPC,J sk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

URBAN J. DIDIER and
EDWARD ASHDOWN,

Defendants.

AFFIDAVIT IN
OPPOSITION

73 Cr. 169 (I.B.C.)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)



JOHN P. COONEY, JR., being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in the office of Thomas J. Cahill, United States Attorney for the Southern District of New York and represent the United States in the above-captioned case. This affidavit and accompanying memorandum of law are submitted in opposition to a renewed motion by the defendant to dismiss the indictment herein for lack of speedy prosecution.

2. On July 29, 1975, this Court filed its opinion denying a similar motion for dismissal of the indictment and the United States respectfully requests that that opinion and the papers submitted by the parties in connection therewith be included herein by references.

3. On or about July 17, 1975, the United States Attorney's office was notified by Edward Panzer, Esq., Edward Ashdown's counsel, that defendant Ashdown had failed to contact him for an extended period of time and that Ashdown's whereabouts were also unknown. On July 17, 1975,

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JPC,JR:sk

the government promptly moved this Court for the issuance of a bench warrant for the defendant Ashdown to assure Ashdown's presence at the trial of this matter then scheduled to commence on September 2, 1975 before this Court.

4. On or about August 18, 1975, Assistant United States Attorney Robert Gold was informed by the United States Marshal's Service that the defendant Edward Ashdown had not been apprehended but that the search was continuing. (See Affidavit of Assistant United States Attorney Robert Gold submitted herewith (hereafter the "Gold affidavit").

5. On or about August 18, 1975 Assistant United States Attorney Gold advised this Court that the defendant Ashdown was still at large and that there was no reason to believe that Ashdown would be apprehended in time to stand trial with the co-defendant Didier on September 2, 1975. Thus, at the Government's request, and in an effort to conserve the Court's time, the trial date of this matter was adjourned sine die in order to afford the Government a fuller opportunity to apprehend the fugitive Ashdown.

6. Immediately, Assistant United States Attorney Gold telephoned Rudolph E. Harper, Esq. Didier's counsel and informed him of the adjournment and instructed him to contact the Court directly if he objected to the adjournment. (Gold affidavit). The United States Attorney's Office was never advised that Didier or his counsel had ever made such an objection.

7. Beginning at the resumption of the Court's schedule in September, 1975 and continuing to the present, this Court has presided over a series of long conspiracy

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IPC,JR:sk

cases involving defendants incarcerated in lieu of bail. From September 2, 1975 to September 9, 1975, this Court presided at the trial of United States v. Simpson, et al, (75 Cr. 436) a bank robbery trial, in which three defendants were incarcerated. On September 22, 1975, this Court Began the trial of United States v. Frank Lucas et al. (S75 Cr.687), a multi-defendant narcotics prosecution. At the conclusion of the Lucas trial on October 24, 1975, the Court presided at the trial of United States v. Tutino, et al (75 Cr. 1038) also a multi-defendant narcotics trial, from November 10, 1975 to December 23, 1975. On January 5, 1976, the trial of United States v. Rivera et al (75 Cr. 936), a multi-defendant counterfeiting conspiracy commenced before this Court and, I am informed, that this trial is likely to continue into the week of January 26, 1976.

8. On November 25, 1975, I had a telephone conversation with Rudolph Harper, Esq. counsel to the defendant Didier, in which I informed Mr. Harper that the Court was then engaged in the Lucas trial referred to above and discussed a date following the conclusion of the Court jail case calendar when the defendants' counsel would be available for trial. The substance of that conversation is recorded by my letter to this Court, with copy to Mr. Harper, of November 25 1975.

WHEREFORE, the Government respectfully requests that the motion of the defendant be denied and that this case be set down for trial at the earliest convenient date.

Maria A. Morales
MARIA A. MORALES
NOTARY PUBLIC, State of New York
No. 31 - 4521851
Qualified in New York County
Term Expires March 30, 1976

John P. Cooney, Jr.
JOHN P. COONEY, JR.
Assistant United States Attorney

Sworn to before me this
15th day of January, 1976.

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A-65 JD

Defendant Didier moves once again¹ for dismissal of the indictment on the ground that he was denied his statutory and constitutional guarantees of a speedy trial. We deny his motion in all respects.

In his affidavit Didier claims that the pending indictment has "affected my business decisions to the point that I have had to maintain a 'non-person' status within my own mind." In addition, he claims he has been required to forego personal relationships, refuse business opportunities and resign a corporate position because of this pending criminal charge. Two additional affidavits attached to his motion papers support Didier's allegations of economic hardship.

In affidavits submitted in opposition to Didier's statutory claim, the prosecution alleges that on or about July 16, 1975 the United States Attorney's Office was notified by Edward Panzer, Esq. attorney for Didier's co-defendant Edward Ashdown, that Ashdown had failed to contact Mr. Panzer for an extended period and that Ashdown's

1. On July 26, 1975 we denied a similar motion.
United States v. Didier, 401 F.Supp. 4 (S.D.N.Y. 1975).

whereabouts were also unknown. On July 16 the Government promptly moved this Court for this issuance of a bench warrant for Ashdown to assure his presence at the trial of this matter then scheduled to commence on September 2 before us. We immediately issued a bench warrant for Ashdown's arrest.

On or about July 18 Assistant United States Attorney Robert Gold was informed by the United States Marshal's Office that Ashdown had not been apprehended but that the search was continuing. On August 18 Mr. Gold advised us that Ashdown was still at large and that there was no reason to believe that he would be apprehended in time to stand trial with co-defendant Didier on September 2. On August 21, at the Government's request and in an effort to avoid needless waste of time that would attend two successive trials, we adjourned sine die the trial date of this matter.

Immediately following our decision to postpone this trial, Mr. Gold telephoned Rudolph Harper, Esq., Didier's counsel and informed him of the adjournment, the reasons therefor and instructed Mr. Harper to contact the Court directly if he objected to the adjournment (Gold Aff., ¶6); (Harper Mot. to Dismiss, p.3). Neither the Court nor the United States Attorney's Office (see, Cooney

Aff., 16) was ever advised of an objection by Didier or his counsel.

Also recited in the prosecution affidavits is the long skein of "back-to-back" trials over which this Court has presided ever since September 2, involving defendants incarcerated in lieu of bail. From September 2 to September 9 we presided over the trial of United States v. Simpson, et al., (75 Cr. 436), a bank robbery case in which all three defendants were incarcerated. On September 22 we began the trial of United States v. Magnano, et al. (75 Cr. 1038), a multi-defendant narcotics prosecution in which one defendant was incarcerated. That trial took approximately five weeks. At the conclusion of Magnano, we presided over United States v. Tutino, et al. (75 Cr. 919), also a multi-defendant narcotics trial which started November 10 and concluded on December 23; several defendants therein were incarcerated throughout the trial. From January 5, to January 22, 1976 we presided over the trial of United States v. Rivera, et al. (75 Cr. 936), a multi-defendant counterfeiting conspiracy case in which several defendants were in jail.

In sum, our judicial energies were directed during these months to disposing promptly those matters wherein one or more defendants were incarcerated and where both sides were ready to proceed.

In interpreting the Prompt Disposition Rules the Second Circuit has held that the Government may have a reasonable period in excess of the statutory six-month limit to obtain the presence of a fugitive, such as Ashdown, and that if a co-defendant wishes to proceed to trial separately it is his burden to move for a severance. The trial Court will then determine whether there is good cause to grant a severance. United States v. Lasker, 481 F.2d 229 (2d Cir. 1973), cert. denied, 415 U.S. 975 (1974).

The Circuit's reasoning in Lasker is instructive:

"In determining the proper operation of [the applicable] Rule... it is important to remember that the primary purpose of the Prompt Disposition Rules was to vindicate the strong public interest in the prompt resolution of criminal prosecutions. It was the intent of the Circuit Council to stimulate the district courts and counsel to resolve criminal cases expeditiously. It was not the Council's aim to make the government vulnerable to dismissal of an indictment where a co-defendant is a fugitive from justice and the government, with some reason, delays action against [a defendant who is] present." Id., at 233.

The obvious pragmatic considerations of avoiding duplicative trials of the same basic issue, clearly outlined in Lasker, have compelling force here. Having had one joint trial of this case, we were rightly troubled

with a potential drain on our time and resources. Indeed, in our prior opinion we emphasized "our concern over wasting judicial efforts by conducting separate trials for Didier and Ashdown." United States v. Didier, supra, 401 F.Supp. at 9. Given these circumstances, an adjournment for a reasonable period to attempt to obtain the presence of Ashdown was proper and for "good cause."

In addition, we were anxious to avoid the pitfall of having the Government "mousetrapped", Lasker, at p. 233, by a defendant who moves for dismissal after the running of the applicable statutory period. Such a defense ploy cannot be countenanced particularly where, as here, defendant's counsel was promptly informed of the Court's decision to adjourn this matter so that the Government could attempt to find the co-defendant Ashdown. Moreover, Mr. Gold invited Didier's counsel to contact the Court directly if he objected to the adjournment. We emphasize the fact that Didier has neither objected to the adjournment, nor, as mandated by Lasker id, at 234, requested a severance so that his case could be promptly tried.

Finally, even had Didier made a motion for severance, and we decided that it should be granted, it would have been most unlikely that we could have tried this case immediately in light of our presiding seriatim over the

trials of numerous defendants who were incarcerated in lieu of bail. Didier's trial probably could not have taken place during this period without placing the Court in the untenable position of giving him, free on bail, priority on our calendar over those incarcerated. Accordingly, we deny Didier's statutory claim.

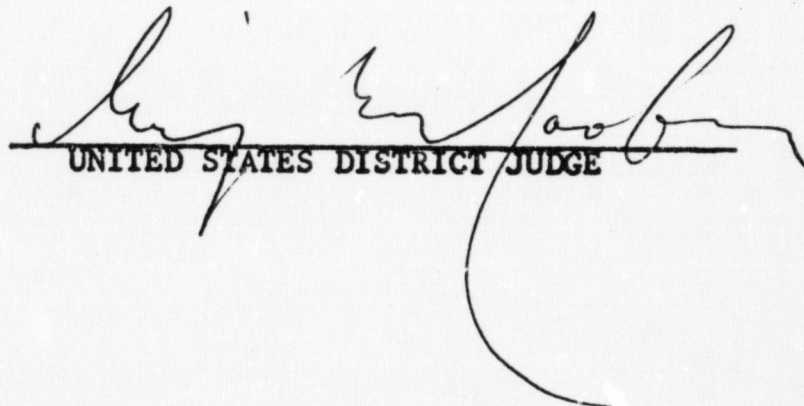
We also find little merit in Didier's constitutional claim. Barker v. Wingo, 407 U.S. 513 (1972), the leading case in this area instructs us to balance four factors in determining the validity of a speedy trial claim: (1) length of delay, (2) reason for the delay, (3) defendant's assertion of his right, and (4) prejudice to the defendant. *Id.*, at 530. Applying that test here, we find that the delay past September 2 was not unreasonably long and that the Government's basis for delay is persuasive. Moreover, we have determined that Didier did not assert his right after notified of the adjournment sine die, nor did he move for a severance as required under Lasker. Although we are cognizant of the financial and mental privation under which Didier labors, we are suitably impressed with the weight of other factors hereinabove mentioned and conclude that, on balance, Didier's constitutional claim must be denied.

In conclusion, we are satisfied that the Government has pursued appropriate remedies to effectuate the apprehension of Ashdown. However, the time has come when further delay with respect to the guilt of Didier should not be countenanced. Accordingly, we are of the opinion that unless the Government can bring Ashdown to trial between now and March 8, 1976, we will be inclined to grant Didier a severance and proceed on March 8 to the trial of Didier alone.

Motion to dismiss denied in all respects.

SO ORDERED:

New York, N.Y.
February 19, 1976


UNITED STATES DISTRICT JUDGE

**COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Index No.

UNITED STATES OF AMERICA,

Respondent.

- against -

DIDIER,

Defendant - appellant

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF **NEW YORK**

SS.:

I, Victor Ortega, *being duly sworn,*
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
1027 Avenue St. John, Bronx, New York
That on the 2nd day of August 19 76 at One St. Andrews Plaza, New York, New York

deponent served the annexed

Robert B. Fiske Jr.

Brief appx

upon

the **Attorney** in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein,

Sworn to before me, this
day of August

2nd
19 76

Robert T. Brin

Victor Ortega

VICTOR ORTEGA

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1977